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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 342.

AMALGAMATED UTILITY WORKERS, affiliated with UTILITY WORKERS ORGANIZING COMMITTEE, CONGRESS OF INDUSTRIAL ORGANIZATIONS, *Petitioner*,

v.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and ITS AFFILIATED COMPANIES, ET AL., *Respondents*.

In the Matter of the Application of
AMALGAMATED UTILITY WORKERS, ETC.,
To Punish
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and ITS AFFILIATED COMPANIES, ET AL.,
For Contempt.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and ITS AFFILIATED COMPANIES, ET AL., *Petitioners*,

—against—

NATIONAL LABOR RELATIONS BOARD, ET AL., *Respondents*.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, ET AL., *Petitioners*,

—against—

NATIONAL LABOR RELATIONS BOARD, ET AL., *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, ET AL., IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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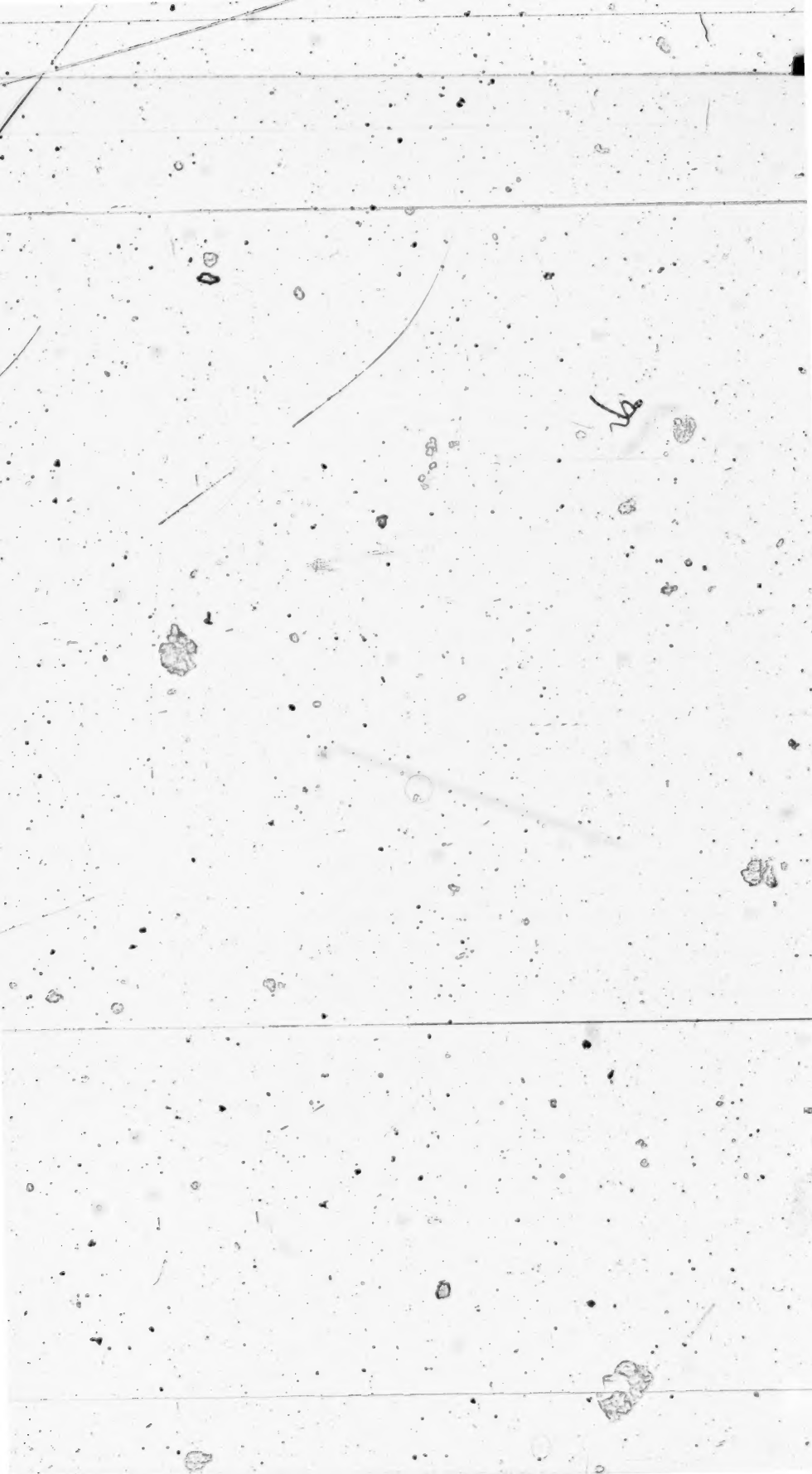

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OPINIONS BELOW.

The Memorandum Opinion of the Court below (R. 13) has not yet been reported.

JURISDICTION.

The Order of the Court below (R. 63) was entered on June 2, 1939. Petitioner (hereinafter sometimes referred to as the "Amalgamated") seeks to invoke the jurisdiction of this Court by virtue of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10(e) of the National Labor Relations Act (hereinafter usually referred to as "the Act").

Petitioner's Motion for an adjudication of contempt against the Respondent Companies, and for additional comprehensive and general relief "as the nature of the case may require", was made and entitled (R. 1) in the review proceedings instituted, respectively, by the Respondent Companies and by these Respondents, the International Brotherhood of Electrical Workers and seven of its Local Unions, made up of employees of the Respondent Companies, under Section 10(f) of the Act, which were before this Court at the October Term of 1938 and decided on December 5, 1938. (305 U. S. 197).

The Matter came before the Court below upon the Petitioner's Notice of Motion and Petition (R. 4-13) with accompanying affidavits, the Motion of the Brotherhood and its said Local Unions for an Order dismissing the said Notice of Motion and Petition of the Amalgamated (which Motion of the Brotherhood has been omitted from the Record by virtue of a Stipulation between Petitioner and the Respondent Companies to which the Brotherhood was not, and was not requested to become, a party*), a Motion of the Respondent Companies, similar

* For the purpose of correcting the omission of these Respondents' said Notice of Motion from the printed Record filed by the Petitioner herein, these Respondents have filed in this cause a Suggestion of a Diminution of the Record and a Petition for an Order for its Correction, and Supporting Papers. See Discussion *infra* at pp. 4-5.

to that of these Respondents, to dismiss the said Notice of Motion and Petition of the Amalgamated, the verified Answer of the Respondent Companies (R. 14-25), and the answering Affidavit of Floyd J. Carlisle with Exhibits A to H, both inclusive (R. 26-62), showing the Respondent Companies' compliance with the Decree of January 21, 1939.

QUESTION PRESENTED.

Petitioner has stipulated (R. 2) its intention to bring up for review, and to rely upon, *only* the question as to whether or not it has standing to make and maintain the Motion, denied by the Court below, to adjudge the Respondent Companies in contempt of Court for alleged violations of the final decree, entered upon the application of the National Labor Relations Board (hereinafter referred to as "the Board"), by the Court below on January 21, 1939 (R. 8-9), which modified in certain respects according to the Mandate of this Court (305 U. S. 197), and granted enforcement of, an Order of the Board, dated November 10, 1937, under Section 8 (1) and (3) of the Act.

STATUTE.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*) are Section 5, Section 6, Section 9, Section 10(a), (b), (c), (d), (e) and (f), and Section 11(1), (2), (3), (4), (5) and (6).

STATEMENT.

The statement of the Matter involved, in the Petition for Certiorari, is not, it is respectfully submitted, accurate. Therefore, these Respondents respectfully submit a statement of the case.

These Respondents desire, respectfully, also to direct this Court's attention, at this point, to their Suggestion of a Diminution of the Record and to their Petition for an Order for its correction, and supporting papers, which these Respondents have heretofore filed in this cause. As alleged in said Suggestion and Petition (pp. 3-4), a Stipulation (R. 1), to which neither these Respondents nor their counsel were parties, or requested to become parties, was entered into on August 24, 1939, between counsel for Petitioner and counsel for the Respondent Companies, and filed in the cause below, in which it was agreed between those parties, among other things, "that the Petitioner for Certiorari need not for such purpose designate for inclusion the complete record and all the proceedings and papers herein". It is further alleged in said Suggestion and Petition that the papers specified in said Stipulation failed to include the Notice of Motion to Dismiss filed by these Respondents, and, moreover, that no *praecipe* or other designation of the papers to be included were served upon these Respondents by the Petitioner; and it is further shown therein (p. 4), with an affidavit (pp. 5-6) of counsel for these Respondents in support thereof, and in correspondence (p. 18) between said counsel and the Clerk of this Court filed therewith, that counsel for the Petitioner refused, upon request by counsel for these Respondents, after the latter learned of the execution and contents of said

Stipulation, to agree that the said Notice of Motion filed by these Respondents be included in the printed Record, and that said counsel for Petitioner had further stated that they did not recognize these Respondents as parties to the cause.*.

Because of their extremely important personal and property rights directly involved in and integrally connected with this cause and the matters and questions raised in and by Petitioner's Motion and Petition which the Court below denied, and in view of the clearly unwarranted reason of Petitioner's counsel for refusing to consent to the inclusion in the Record of these Respondents' said Notice of Motion, namely, that they did not recognize these Respondents as parties to the cause, all of which is in contravention of explicit findings and conclusions of this Court in this cause, involving the same parties and subject-matters and the same Order of the Board, it is respectfully submitted that the Order prayed by these Respondents for the correction of the Record should be granted.

The cause in the Court below in which the Petitioner's Motion for the adjudication of contempt was filed, as will be seen by reference to its title (R. 1), was the original proceeding by these Respondents and the Respondent Companies, under Section 10(f) of the Act,

* Paragraph III of said Stipulation provides: "That upon the hearing of any application by Amalgamated Utility Workers, etc., for such a writ of certiorari, and upon any hearing of the case by and before the Supreme Court of the United States if certiorari be granted, the respondents Consolidated Edison Company of New York, Inc., et al., may submit to the Court, and refer to, any other notices of motion or any other affidavits submitted with the motion, the petition, or the answer, and which were filed with the Circuit Court of Appeals for the Second Circuit by either side; and that *any other party to the proceeding* may likewise submit to the Court and refer to any other notices or affidavits which were filed with this Court upon such motion."

to review and set aside the Board's Order of November 10, 1937. The Court below, in said cause, denied relief both to these Respondents and the Respondent Companies (95 F. (2) 390) and directed the enforcement of the Board's Order. On Certiorari to the Court below to review said decision, this Court, on December 5, 1938 (305 U. S. 197), directed that the decree in the cause be modified so as to hold unenforceable the provision of Paragraph 1(f) of the Board's said Order, and the application to that provision of Paragraph 2(c) of said Order.* Thereafter, and in accordance with the Mandate of this Court, the Court below, on January 21, 1939, by its final Decree in the cause (R. 8-9), duly modified its said original Decree as this Court had directed.

These Respondents, together with the Respondent Companies, were made Respondents in the said proceeding for the adjudication of contempt. The Petitioner's Notice of Motion (R. 3) was addressed by Petitioner to counsel for these Respondents (R. 4) as well as to counsel for the Respondent Companies, and to the General Counsel for the Board in Washington, D. C., and its acting Regional Attorney in New York City. Thereafter, Motions to Dismiss Petitioner's said Motion and Petition, on behalf of these Respondents and the Respondent Companies, as well as the verified Answer of the Respondent Companies, with supporting affidavits, referred to above, were filed in the cause. The Motions to Dis-

* Paragraphs 1(f) and 2(c) of the Board's Order (R. 6-7) had required the Respondent Companies to cease and desist from giving effect to their contracts with these Respondents, and to post notice to the employees of said Respondent Companies stating, among other things, that they would cease and desist in the manner aforesaid and that they would not discharge or in any manner discriminate against any employee for refusal or failure to join these Respondents or any other labor organization.

miss were argued, and supporting Briefs submitted to the Circuit Court of Appeals, by Counsel for both groups of Respondents who, respectively, filed said Motions

The Petitioner's Motion (R. 4-13) alleges, in detail, the proceedings in the cause from the time of their inception before the Board, which was by the filing of the original charge of unfair labor practices against the Respondent Companies by the present Petitioner's predecessor, and which proceedings resulted in the Board's Order of November 10, 1937. The relief sought against the Respondent Companies, and their respective officers, directors and agents, was that they be adjudged in contempt of the Court below for having failed to comply with its Decree of March 21, 1938, as amended by its Decree of January 21, 1939, and there is then added a separate, general and comprehensive prayer, not directed at any specified person or persons, that "thereafter this Court take such action as shall appear just, reasonable and necessary to make effective the Order of the Board" as ordered to be enforced by the Court below.

It is to be noted that Petitioner did not file its Motion and Petition as a person aggrieved under Section 10(f) of the Act, nor is there any citation or mention in said Motion and Petition of any provision of the Act, or of the Board's Rules and Regulations, or of any Statute whatsoever, under which jurisdiction was alleged or intimated to exist.

Without reviewing in detail the many allegations of Petitioner's Motion upon which the relief it prays is based, we deem it sufficient for the purposes of this statement, merely to point out *the pervading averments*

therein showing these Respondents' serious interest in and integral connection with the subject matter involved, and showing also the utter lack of right or standing of Petitioner to make or maintain its said Motion and Petition. All of the allegations dealing with the proceedings generally before the Board, including the filing of the charge and the complaint, the several hearings, the Board's findings of fact and conclusions of law, and its Final Order destroying, as it did, these Respondents' contracts and personal rights, were and are, of course, as this Court has already adjudicated, of important and serious interest to these Respondents.*

The Amalgamated's Motion and Petition charge that the Respondent Companies have wilfully, deliberately and maliciously failed and refused to obey the Orders of the Court below, and are continuing to refuse to obey them, in that they have violated and are continuing to violate specified sections of the Board's Order, namely, by permitting organizers and collectors of these Respondents, which are referred to as I. B. E. W., to engage in union activities, while refusing similar privileges to organizers and collectors of Petitioner; (paragraph 11) by urging, persuading, warning and coercing employees into joining I. B. E. W. and threatening them with discharge if they failed to join I. B. E. W., and have gone so far in their interference with the self-organization of their employees as to require certain employees to become organizers and

*It is stated in paragraph 4, erroneously, as the Record in the cause in this Court in the October Term, 1938, shows, that "The I. B. E. W. and certain locals thereof applied for permission to *intervene*, which permission was granted." These Respondents, in that case, petitioned the Court below, under Section 10(f) of the Act, as persons "aggrieved," to review and set aside the Board's Order of November 10, 1937.

shop stewards of I. B. E. W.; (paragraph 12) by urging, persuading, warning, and coercing their employees into paying dues to I. B. E. W., and into signing check-off agreements of I. B. E. W., collecting dues for I. B. E. W. through supervisory employees, and otherwise giving assistance to I. B. E. W.; (paragraph 13) by permitting their employees, supervisory and otherwise, to be active in behalf of I. B. E. W., such activities having included the distribution of I. B. E. W. membership and application cards and buttons, the collection of I. B. E. W. dues, the solicitation of membership in I. B. E. W., the signing of check-off agreements of I. B. E. W., and that said practices of I. B. E. W. are flagrantly carried on during working hours and upon company property; (paragraph 15) by permitting their employees who constitute grievance committees of I. B. E. W. to meet with the Company for the purpose of discussing grievances, supervisory officials having openly admitted that their orders from the Companies were to meet only with I. B. E. W. grievance committees; (paragraph 16) by recognizing and bargaining exclusively with I. B. E. W. as the collective bargaining agent of the employees; and (paragraph 17), by negotiating and bargaining collectively with I. B. E. W. and discriminating and extending privileges in favor of I. B. E. W., while refusing to extend like privileges to the Petitioner.

The Motion* of these Respondents to Dismiss Petitioners' Petition or Motion was duly and fully presented to, argued before, and acted and decided upon by the Court below, together with the several and respective,

* For text of these Respondents' Notice of Motion to Dismiss, duly certified, the Court is respectfully referred to pages 9 to 13 of these Respondents' Suggestion of a Dimunition of the Record and Petition for Order for its Correction, and supporting papers, already filed in this cause.

Motions of the Respondent Companies, the accompanying affidavits, and the verified Answer of the Respondent Companies.

The grounds asserted and assigned by these Respondents in support of their said Motion to dismiss the Amalgamated's Petition were, among others, (1) that the Petitioner had no standing, under the Act or otherwise, to institute and maintain the proceeding as said Petitioner, under its Notice of Motion and Petition, was attempting to do; (2) that the attempted proceeding of Petitioner was in disregard of the Opinion and Mandate of this Court, in the review proceedings in which the Motion was entitled and brought, which Opinion interpreted the parts of the Board's Order on which the said Motion relied; and that the Motion was in effect to secure an enlargement and modification of the Board's said Order and the final decree of the Court below, so as to make the Board's Order as modified apply to and determine and prohibit matters not litigated, determined and prohibited by such Order and Decree; and (3) that the facts stated in Petitioner's said Petition or Motion and accompanying affidavits were insufficient to show or constitute a violation of the modified Decree, entered by the Court below on January 21, 1939, granting enforcement of the Board's Order of November 10, 1937, as modified and interpreted by the Opinion of this Court of December 5, 1938.

The Respondent Companies, in both their Motion to Dismiss the Petition of the Amalgamated and their Answer to it on the merits (R. 23), asserted, among other substantial grounds, that the Petitioner had no standing, under the Act or otherwise, to institute and maintain the proceeding. The Respondent

Companies clearly establish in their said Answer (R. 14, 22-23) that approximately 65 per cent of their eligible employees are fully paid-up members of these Respondents. They further establish, in their said Answer and in the supporting affidavits (R. 26-62), compliance with Section 9(a) of the Act and with the Opinion and Mandate of this Court.

The Court below denied Petitioner's Motion and Petition, filing only a Memorandum Opinion of which the full text is (R. 13):

> "Motion denied on ground that moving party has *no standing* to press a charge of civil contempt, if contempt has been committed. *Under the National Labor Relations Act the Board is the proper party to apply to the court for an order of enforcement and to present to the court charges that the court's order has not been obeyed.*"

The action of the Court below on these Respondents' Motion to Dismiss, and also on the Respondent Companies' Motion to Dismiss, rendered without opinion, were Decrees* reading:

> "Motion denied on ground that the matters submitted in support thereof should properly be asserted in opposition to the Amalgamated Utility Workers' motion to punish for contempt."

However, it perfectly appears that the action of the Court below in dismissing the Amalgamated's Motion and Petition was explicitly and literally predicated upon the specific ground principally urged in the Motions to Dismiss filed by both the Respondent Brotherhood and Local Unions and the Respondent Companies that the

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* Appears at page 13 of these Respondents' Suggestion of a Diminution of the Record, etc.

moving party had no standing to press a charge of civil contempt, if contempt has been committed, and that Under the National Labor Relations Act the Board is the proper party to apply to the Court for an Order of enforcement and to present to the Court charges that the Court's Order has not been obeyed.

ARGUMENT.

I.

The Petitioner Had No Right or Standing, Under the National Labor Relations Act, or Otherwise, to Institute and Maintain Its Proceeding Herein for the Order It Prayed to Punish for Contempt, Because Under the Act the Board Alone Is the Proper Party to Apply to the Court for an Order of Enforcement and to Present to the Court Charges That the Court's Order Has Not Been Obeyed.

The Court below held that the "moving party has no standing to press a charge of civil contempt, if contempt had been committed. *Under the National Labor Relations Act the Board is the proper party to apply to the Court for an order of enforcement and to present to the Court charges that the Court's order has not been obeyed*".

The soundness and correctness of the Decision of the Court below upon this point does not, it is respectfully submitted, admit of any reasonable doubt. The effect of the Act itself is so plain as to exclude any substantial question as to the propriety of the Court's Decision.

Petitioner had no lawful standing or authority under the Act, or otherwise, to institute and maintain its proceeding and Motion in the Court below for contempt. It is respectfully submitted that only the Board is au-

thorized by the Act to enter Orders under and within the scope of the Act, to petition the Circuit Courts of Appeals, or, in the alternative, the other Federal Courts designated by the Act, to enforce its Orders, and, for the protection of those for whom the Act authorizes the Board to enter its Orders and to apply to the Courts for their enforcement, to take action to have the Courts punish for contempt those who violate the decrees of the Courts enforcing the Board's Orders. That such is the effect and intent of the Act is apparent throughout its context and particularly in Section 5; Section 6; Section 9; Section 10(a), (b), (c), (d), (e) and (f) and Section 11(1), (2), (3), (4), (5) and (6).

If private parties, whether individuals or labor organizations, irrespective and independent of action by the Board, could institute proceedings to punish for contempt for violations, including continued violations, of the Board's Orders and of the decrees, enforcing such Orders, then any such parties could renew and continue the litigation of the questions involved in the proceedings upon which the Board and the Courts had passed, without end. And instead of the Board, upon its responsibility under the Act, being the official Actor in the proceedings to protect its Orders and effectuate the Act, any employee or group of employees could usurp and assume that exclusive function and duty of the Board. The purposes of the Act, and the authority and duty of the Board thereunder to pass the orders provided for by the Act for the protection of those whom the Board is constituted to protect, make and establish the Board as the sole functionary or agency appointed and directed to afford such protection, and to effectuate such protection by securing the enforcement of its Orders by the decrees

of the Courts upon its, the Board's, application to that end, and *a fortiori*, if the decrees of the Courts so passed be disobeyed or violated by the persons who are directed to obey them, it is the exclusive function and duty of the Board to ask the Courts to enforce their decrees by supplemental decrees, or by proceedings for contempt, or in such manner as may be appropriate to the particular occasion. If parties other than the Board had the right to anticipate and forestall the function of the Board to apply to the Court for enforcement and effectuation of the Board's Orders, and for enforcing and effectuating the Courts' decrees passed specifically to enforce the Board's Orders, then the powers and duties of both the Board and the Courts, *as definitely ascertained and marked out by the Act*, would be subject to invasion and usurpation by unofficial parties, and the effectuation of the Act and of the powers and duties of the Board would be thrown into endless and inextricable confusion. In brief, the Act has exactly, throughout its several provisions, established, created and commanded the Board to protect the rights of those whom the Board and its powers were ordained to protect, and it is for the Board exclusively to exercise those functions in the public interest, without power upon the part of the Board to abdicate them, and without the right upon the part of anyone else, individual or organization, to invade or usurp them.

If employees are injured, in violation or derogation of the Act, by the failure of any employer to obey and carry out a decree of a Court enforcing an Order of the Board, the plain, appropriate remedy of such employees is to *apply to the Board* to take steps to relieve them of their injury by applying to the Court to enforce its own decree whether by contempt proceedings or other appro-

priate mandate or remedy. The Board may pass and enter an Order, but, even if it be violated, may never ask for its enforcement, and the individual or union, upon whose complaint the Board acted by instituting the proceeding, has not the slightest right to require the Board to apply to the Court for the enforcement of its Order.

Meyers v. Bethlehem etc. Co., 303 U. S. 41; 48; 51.
Newport News etc. Co. v. Schauffler, 303 U. S. 54; 57.
N. L. R. B. v. Jones and Laughlin etc. Corp., 301 U. S. 1; 46; 47.
Petition of N. L. R. B., 304 U. S. 486.

The similar and corresponding language of the Federal Trade Commission Act does not give any right to a person aggrieved by any violation of that Act to a proceeding or remedy to enforce that Act by proceedings for contempt or in any other manner. In this respect the National Labor Relations Act was explicitly analogized to the Federal Trade Commission Act in the Report of the Committee of the House of Representatives submitted to the House with the formulated Bill, which became the National Labor Relations Act, and the Committee's recommendation of its passage. In that Report, No. 972 of the 74th Congress, the Committee said:

> "The Board is empowered, according to the procedure provided in Section 10, to prevent any person from engaging in any unfair labor practice listed in Section 8 'affecting commerce', as that term is defined in Section 2(7). *This power is vested exclusively in the Board and is not to be affected by any other means of adjustment or prevention.* The *Board* is thus made the paramount agency for deal-

ing with the unfair labor practices described in the bill.

"The procedure provided is analogous to that in the Federal Trade Commission Act (Sec. 5) and is familiar to all students of administrative law. * *

"* * *No private right of action is contemplated.* Essentially the unfair labor practices listed are matters of *public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint.* The form of injunctive and affirmative order is necessary to effectuate the purpose of the bill to remove obstructions to interstate commerce which are by law declared to be detrimental to the public weal."

The above specific declaration of the House Committee, condensed but undiminished in substance, is expressed in Section 10(a) of the Act itself:

"Sec. 10(a). The *Board* is empowered, as hereinafter provided, to prevent *any* person from engaging in any unfair labor practices (listed in section 8) affecting commerce. *This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.*"

The power provided by the Act to relieve against and prevent unfair labor practices is thus not only vested in the Board, but is made unmistakably "exclusive", and not only "exclusive" but so utterly and absolutely "exclusive" that it is additionally declared by the Act that it the said power, "shall *not be affected* by any other means of adjustment or prevention that has been or may be established by *agreement, code, law, or otherwise*".

Nor does the Act leave the matter, as an absolutely exclusive power in the Board alone, to rest even upon those provisions, comprehensive, conclusive and secure as they obviously are. It expressly, consistently and decisively vests *all power of enforcement in the Board alone, confines* the *power there* and *excludes and precludes its existence anywhere at all outside of the Board.* All the enforcement powers of Section 10, in terms too plain to admit of any doubt, concur specifically and invariably to that effect and that end.

Besides, as is now fully settled and understood, the policy and purpose of the Act were to maintain an unburdened, unobstructed and uninjured interstate commerce, by preventing the burden, obstruction and injury which strife and interruptions growing out of labor controversies impose and inflict upon that commerce, which the Board is constituted and empowered, as the responsible and exclusive public agency, to protect. The paramount policy and purpose of the Act was so expounded and declared by this Court in *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 301 U. S. 1, 37-41; *Consolidated Edison Company of New York, Inc., and International Brotherhood of Electrical Workers v. National Labor Relations Board,* 305 U. S. 197, 220-221; *National Labor Relations Board v. Fainblatt,* 306 U. S. 601.

In *Federal Trade Commission v. Klesner,* 280 U. S. 19, this Court, speaking of Section 5 of the Federal Trade Commission Act, with which the Report of the Congressional Committee substantially identified the procedure prescribed in the Wagner Act, said (p. 25):

> "* * * Section 5 of the Federal Trade Commission Act does not provide private persons with an

administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the Government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may of course bring the matter to the Commission's attention and request it to file a complaint. But a denial of his request is final. And if the request is granted and a proceeding is instituted, he does not become a party to it or have any control over it."

It is clear under the Federal Trade Commission Act, and equally clear under the National Labor Relations Act, that a private person, corporation or other entity may not file or maintain any complaint which may be prosecuted before the Commission under the former Act, or before the Board under the latter. Under both Acts, if there is to be any prosecution of any charge or complaint or proceeding against any alleged offender, it must be by and in the name of the Commission or the Board, representing and acting as and for the Government, which alone initiates, maintains, conducts and defrays the expense of the proceeding, in every instance, exclusively and alone.

Moreover, the Decision of the Court below concurs and is entirely uniform with decisions of other Circuit Courts of Appeals in their denial of any standing on the part of an employee or a union of employees to maintain proceedings in Court for the enforcement of orders of the Board. The holding in other Circuits is that the procedure provided by the Act is not and cannot be "made

a private one to enforce a private right. It is a public procedure looking only to public ends."

Agwilines, Inc., v. National Labor Relations Board, 87 F. (2) 146, 150 (C. C. A. 5).

National Labor Relations Board v. Colton, 105 F. (2) 179 (C. C. A. 6).

National Labor Relations Board v. Hearst, 102 F. (2) 658, 664 (C. C. A. 9).

National Labor Relations Board v. Carlisle Lumber Company, 99 F. (2) 533, 537 (C. C. A. 9).

An employee or a union of employees may file a charge with the Board under the Act, Section 10(b), but, upon their own part, may not proceed beyond that. The Board alone may and must decide whether or not it will make or issue a complaint upon the charge and whether or not any proceeding thereon shall ensue. If the Board decides that there shall be such complaint and proceeding it retains exclusive and complete control over every following stage of the hearing, decision and the proceeding, if any, to enforce its decision. Even after rendering a decision and order the Board may decide, in its own discretion, to rescind or modify it, or not to ask for its enforcement in either its original or modified form, and no one, employee or union of employees, or employer, or any other governmental authority, may control, or impose any restriction or requirement upon, the Board's discretion to apply or not to apply to the Court for an enforcement of its order at any stage or in any respect. The only qualification to the power and discretion, above stated, of the Board is the right of "any person *aggrieved*" to petition the Courts designated in Section 10 of the Act to review and either set aside or modify an Order of the Board.

It is thus plainly manifest that no person or association or union of employees have any standing in Court respecting an Order of the Board in any particular, unless they are *"aggrieved"* by the Order and that such standing, as a person aggrieved by the Order, is strictly limited and confined to a proceeding by petition to the Court to review the Order and set it aside or modify it. All the sub-paragraphs of Section 10, and particularly Section 10(f), are, beyond misunderstanding, to that effect.

Not only the sub-paragraphs of Section 10, but as mentioned hereinabove, Section 5, Section 6, Section 9, and Section 11 (1), (2), (3), (4), (5) and (6) of the Act, have the same unmistakable intendment. Section 5 and Section 6 vest in the Board, solely, full and complete discretionary authority to "prosecute any inquiry necessary to its functions" and to "make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this Act." Section 9, dealing with and providing for "Representatives and Elections," after stating, in sub-paragraph (a), that representatives designated or selected for the purposes of collective bargaining by the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in such unit for such purposes, and affording employees the right to present grievances to their employer, proceeds, in sub-section (b), to clothe the Board with the right to decide in each case the unit appropriate for such purposes, and, in sub-section (c), to investigate and certify the name or names that have been designated or selected, and sub-section *(d) provides for the inclusion in the transcript, in review cases*

under Section 10(f), of the certification and the record of an investigation under Section 9.

Under "Prevention of Unfair Labor Practices," Section 10(a) expressly makes the power of the Board, in its function designated in the caption to the Section, absolutely exclusive; sub-section (b), as stated above, vests the right in employees to file a charge with the Board under the Act, but affords employees no further rights in any respect, and, under sub-sections (c) and (d), the authority of the Board in the prevention of unfair labor practices is provided for, to be exercised, as stated in sub-section (a), namely, exclusively.

Section 11 vests the Board with "Investigatory Powers" for the purpose of *all hearings and investigations*, which, in the opinion of the Board, are *necessary and proper for the exercise of the powers vested in it by Section 9 and Section 10.* By sub-section (1) the Board is given the right of access to any relevant evidence of any person being investigated or proceeded against, and to issue subpoenas and administer oaths; by sub-section (2), in cases of contumacy or refusal to obey such subpoenas, designated Courts, upon application by the Board, are given jurisdiction to enforce the Board's powers; sub-section (3) contains provisions relating to self-crimination in giving evidence in obedience to the subpoena of the Board; sub-section (4) provides methods for the service of the Board's processes and provides that fees and mileage of witnesses summoned before the Board shall be the same as those in the Courts of the United States; sub-section (5) contains provisions for the service of process of any Court to which application may be made under the Act; and by sub-section (6) the Board, upon its request, may, when the President so directs, obtain all records,

papers and information from the several departments and agencies of the Government relating to any matter before the Board.

II.

Petitioner's Motion, Which the Court Below Denied, Contravenes the Opinion and Judgment of This Court in the Review Proceedings in Which It Is Entitled and Brought, Which Opinion Interpreted the Parts of the Order of the Board on Which the Motion Mainly Relies; the Motion Being in Effect to Secure an Enlargement and Modification of the Order of the Board and the Final Decree of the Court Below and to Expand the Scope and Operation of the Order and Decree, so as to Make the Board's Order as Modified Apply to and Determine and Prohibit Matters Not Litigated, Determined and Prohibited by the Order and Decree.

The Motion of the Petitioner is in derogation of the Opinion and Judgment of this Court, rendered December 5, 1938, in the review proceedings in which the Motion herein is entitled and brought. In its Opinion, this Court construed and limited the particular parts of the Order of the Board upon which the Motion herein for contempt relies. The Opinion of this Court discloses that the Motion herein is in effect to secure a modification and enlargement of the Order of the Board in excess and beyond the limitations which this Court expressly put upon the Board's Order. Such an expansion of the scope and operation of the Order of the Board and the Decree of the Court below, pursuant to the Opinion and Mandate of this Court in directing the modification of the Board's Order, would be directly in contravention of the Opinion and Mandate of this Court and, in effect, undo and

nullify a material and vital part of that Opinion and Mandate.

With reference to this subject, the substance of the complaint of the Amalgamated, set forth in detail throughout its Petition, is of things alleged to have been done by the Companies, and things which the members of the Brotherhood Unions, these Respondents, are alleged to have done with the sanction of the Companies. *The essence and burden of the Motion and complaint are that the Companies have continued to bargain collectively and deal with these Respondents, the Brotherhood and its Locals, in recognition and pursuance of the contracts, between the Companies and these Respondents, which this Honorable Court saved from abrogation and upheld as valid and operative, instead of bargaining and dealing with the Amalgamated.*

The Amalgamated's Motion and Petition, and its complaint therein, are founded and asserted upon Paragraph 1(f), *formerly 1(g)*, of the Board's Order of November 10, 1937, which provides that the Companies shall "cease and desist" from "Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees".

This Court will recall that, with reference to said Paragraph 1(g) of the Order, it declared in its Decision of December 5, 1938, of the cases presented by the Petition of the Companies and the Petition of the Brotherhood and its Locals:

> "Subdivision (g) of that paragraph, requiring the companies to cease recognizing the Brotherhood 'as the exclusive representative of their employees', stands on a different footing. The contracts do not claim for the Brotherhood exclusive representation

of the companies' employees but only representation of those who are its members, and the continued operation of the contracts is necessarily subject to the provision of the law by which representatives of the employees for the purpose of collective bargaining can be ascertained in case any question of 'representation' should arise. Section 9. *We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law.*"

With reference to the making of these contracts, this Honorable Court in its Opinion rendered by Mr. Chief Justice HUGHES, page 232 of 305 U.S., said:

"It also appears from the evidence, which was received without objection, that the Brotherhood and its locals comprised over 30,000 or 80 per cent of the companies' employees out of 38,000 eligible for membership."

And at pages 236-237, the Court further said:

"The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining. Under Section 7 the employees of the companies are entitled to self-organization, to join labor organizations and to bargain collectively through representatives of their own choosing. The 80 per cent. of the employees who were members of the Brotherhood and its locals, had that right. They had the right to choose the Brotherhood as their representative for collective bargaining and to have contracts made as the result of that bargaining. * * * The Board by its order did not direct an election to ascertain who should represent the employees for collective bar-

gaining. Section 9 (c). Upon this record there is nothing to show that the employees' selection as indicated by the Brotherhood contracts has been superseded by any other selection by a majority of employees of the companies so as to create an exclusive agency for bargaining under the statute. * * * Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce. They contain no terms which can be said to 'affect commerce' in the sense of the Act so as to justify their abrogation by the Board. The disruption of these contracts, even pending proceedings to ascertain by an election the wishes of the majority of employees, would remove that salutary protection during the intervening period."

And, further, upon page 238, the Court said:

"The Brotherhood was entitled to form its locals and their organization was not assailed. The Brotherhood and its locals were entitled to solicit members and the employees were entitled to join. These rights cannot be brushed aside as immaterial for they are of the very essence of the rights which the Labor Relations Act was passed to protect and the Board could not ignore or override them in professing to effectuate the policies of the Act. To say that of the 30,000 who did join there were not those who joined voluntarily or that the Brotherhood did not have members whom it could properly represent in making these contracts would be to indulge an extravagant and unwarranted assumption."

And after concluding "that the Board was without authority to require the petitioning companies to desist from giving effect to the Brotherhood contracts, as provided in subdivision (f) of paragraph one of the Board's order", the Court expressed its judgment and determination, above recited, respecting subdivision (g), now (f), of Paragraph 1 of the Order.

As of March, 1939, a careful and exhaustive verification by the Respondent Companies and also by these Respondents, the Brotherhood and Local Unions, of the membership and dues records indicated 65% of the employees of the Companies as members of the Brotherhood and its Locals with dues fully paid. This is shown in elaborate detail in the Affidavit of Mr. Floyd L. Carlisle and reference to the Affidavit of Dr. J. J. Wittmer, in the printed Record herein. These Affidavits fully support Paragraphs VIII and IX of the Respondent Companies' Answer (R. 19-21), and also Paragraphs XIV, XV and XVI of their Answer (R. 22-23).

For the exhaustive details upon this subject, the attention of this Court is respectfully directed to the Affidavit of Mr. Carlisle (R. 28-29) as to Membership of Employees in Labor Organizations; and (R. 28-30) as to The Collective Bargaining Contracts in Force Between the I. B. E. W. and the Companies; and particularly (R. 32-36) upon Recent Checking and Verification of the Extent of I. B. E. W. Membership Among the Companies; and see the Report of Dr. Wittmer, included in Mr. Carlisle's Affidavit (R. 32-34) and Dr. Wittmer's conclusion (R. 34).

See also Exhibit "F": I. B. E. W. Membership Among Employees of the Companies, Determined from Review of Membership Records During March, 1939 (R. 58).

It thus clearly appears that in making and continuing the contracts of these Respondents, the Brotherhood and its Local Unions, with the Companies, 65% of the employees have selected and continued the Brotherhood and its Locals as their representative for the purposes of collective bargaining. Accordingly, it would seem to be too obvious for argument that the essential object of the Amalgamated's Petition and Motion was to avoid the conditions and proceedings sanctioned by this Honorable Court in its Opinion and Judgment in the cases in question and, in effect, to nullify or evade the clear determinations of this Court therein.

Moreover, the Opinion of His Honor, Mr. Chief Justice HUGHES, for the Court, in the cases referred to, refers repeatedly to Section 9(a) of the National Labor Relations Act in connection with the subjects embraced in the above-recited excerpts from the Opinion. That Section, 9(a), provides:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

In the *Jones and Laughlin case* (301 U. S. 1, 44), this Court held that the obligation to deal with the true representative imposes the negative duty to treat with no other. The Circuit Court of Appeals has held that there is no duty to bargain if the representatives are

not the proper representatives of the majority in an appropriate unit. *Mooresville Cotton Mills v. National Labor Relations Board* (C. C. A., 4th), 94 Fed. (2nd) 61, affirmed on rehearing 97 Fed. (2nd) 959.

Under the rulings of the Board, the Companies were under no duty to bargain or deal also with a minority labor organization. The Board held in the case of *Mooresville Cotton Mills* and *Local 1221, United Textile Workers of America*, 2 N. L. R. B. 1081, that it was not an unfair labor practice for an employer to refuse to discuss grievances with employees' representatives who do not represent a majority of an appropriate unit. See, also, *Matter of Williams Manufacturing Company, Portsmouth, Ohio*, 6 N. L. R. B. 30, where the Board dismissed the charge of violation of Section 8(5) of the Act because of the failure to show majority representation at the time requests to bargain were made. See, also, *Matter of M. Lowenstein & Sons, Inc.*, 6 N. L. R. B. 37, and *Matter of Titan Metal Manufacturing Company*, 5 N. R. L. B. 81.

III.

The Facts Stated in Petitioners' Motion and Accompanying Affidavits Were Insufficient to Show or Constitute a Violation of the Modifying Decree Entered by the Court Below on January 21, 1939, Granting Enforcement of the Order of the Board Entered November 10, 1937, as Modified and Interpreted by the Opinion and Judgment of This Court on December 5, 1938.

The facts stated in the Motion and Petition and accompanying Affidavits are insufficient to show a violation of the modifying Decree entered by the Court below on January 21, 1939, pursuant to the Mandate of this Court,

granting enforcement of the Order of the Board of November 10, 1937, as modified and interpreted by this Court.

The affidavits filed by the Amalgamated with its Motion and Petition and the Respondent Companies' Answer and supporting affidavits plainly show that Amalgamated, a small minority Union, which submits no evidence and makes no showing of its membership, is seeking to supplant a large majority Union, consisting of a verified 65 per cent. of the employees in dealing and contracting with the Companies, their contracts being both fair and directly conducive to the public interests and welfare and to the effectuation of the paramount policy and purpose of the National Labor Relations Act. The Amalgamated does not embrace even the 35 per cent. of the employees outside of the Brotherhood and its Local Unions, because the 35 per cent. is divided between members of the Amalgamated and members of no union at all (R. 28-29).

The detailed and exhaustive Answer of the Respondent Companies to the Amalgamated's Motion and Petition (R. 14-25), wholly refutes and overcomes the claims of the Motion and Petition. Paragraph II of the Answer denies each and every allegation of Paragraphs 10 to 19, inclusive, of the Motion and Petition that the Companies or any of them have been guilty of any violation of the modifying Order entered by the Court below on January 21, 1939, or of the Order of the Board as modified and interpreted by this Court; and alleges that the Companies, ever since said Order of January 21, 1939, have complied, and intend to comply, in good faith, with said Order so modified. The Answer then makes specific denial of the allegations of Paragraphs 10, 11, 12, 13 and 14

of the Motion and Petition (Answer, Paragraphs III, IV, V, VI and VII, R. 15-19). Paragraph VII of the Answer, denying the allegations in Paragraph 15 of the Motion, alleges compliance upon the part of the Companies in good faith with Section 9(a) of the Act, refers to its contracts with the I. B. E. W. and its Locals "containing a substantial majority of its eligible employees"; shows that such I. B. E. W. majority has recently been ascertained by a detailed count and check; and the validity of the contracts and their continuance in force adjudicated and upheld by this Court in the review proceedings in which the pending Motion is entitled and instituted; and, substantial provisions of the contracts and their wholesome effect are set forth (R. 19-20). Paragraph IX of the Answer denies the allegations of Paragraph 16 of the Motion, refers to the large majority of their employees in the Brotherhood and Locals, and to Section 9(a) of the Act, and the interpretation of this Court of the provisions of the Order of the Board, and particularly refers to the accompanying affidavits of Mr. Carlisle and Dr. Wittmer (R. 20-21).

Paragraphs X, XI and XII of the Answer deny each and every allegation of Paragraphs 17, 18 and 19 of the Motion (R. 20); and Paragraph XIII of the Answer denies any and every violation in any respect of the Order of Court or of the Board as modified (R. 21-22). Paragraphs XIV, XV and XVI, hereinabove referred to in the discussion under Point II of this Brief, set up the matters therein pointed out by these Respondents (R. 22-23).

Mr. Carlisle's affidavit (R. 26-40) denies "categorically and emphatically" that the Companies have violated the Order of Court or the Order of the Board as modified. With respect to the membership of employees in labor

organizations, he shows that as of March, 1939, the Companies had 37,059 employees, of whom some 1,820 were not eligible for membership in labor organizations, because of their supervisory duties; and that of the 35,239 eligibles, some are members of the I. B. E. W., some of the Amalgamated, and some of no labor organization. He further shows that of the eligibles, 22,892, about 64.9 per cent. are members of the I. B. E. W. in good standing, with dues fully paid, and had selected the I. B. E. W. as their representative for collective bargaining; that this membership was ascertained and verified by a detailed count and check February and March, 1939, in the manner he later describes. As of the time covered by the proofs before the Board and this Honorable Court, that is, as of June, 1937, the I. B. E. W. was shown to have 60 per cent. of the employees with dues paid up; and in March, 1939, the percentage, shown by the verified records, was 64.9 per cent.

His affidavit proceeds to state that the membership of the CIO among the Companies employees has not been stated or described, although, as he expressly states, the moving papers show that the CIO had been invited by him to submit a statement or proof of its membership, *which was never done.* His affidavit further states "the greater part of our employees who are not members of the I. B. E. W. are members of no Union" (R. 28-29).

Mr. Carlisle's affidavit then states that in dealing with the claims of the rival organizations among their employees, he kept in mind, and has been advised of the effects of, Section 9(a) of the Act, which Section is quoted in the affidavit; following which, the affidavit expressly states *"In the moving papers on this motion, I*

find no statement of CIO membership and no facts which are claimed to show or indicate a CIO majority" (R. 29).

Mr. Carlisle's affidavit next refers to the collective bargaining contracts in force between the I. B. E. W. and its seven Local Unions and the Companies. Referring to essential provisions of the contracts, the affidavit proceeds to state *"the advantages of such contracts to the public, the employees and the Companies are obvious, and have been commented on by the Supreme Court."* A contract is annexed as an exhibit; and the affidavit then recalls that the validity of the contracts was adjudicated by this Court and the Board's Order accordingly modified so as to take out the clause invalidating them; and that by the action of the Local Unions composing a substantial majority of the employees of the Companies, the contracts have been continued in full force and effect (R. 29-30).

The affidavit then demonstrates the Companies' compliance with the Order of the Board as modified and granted enforcement, the particulars whereof are set forth in Paragraph III (8), (9), (10) and (11) of the Answer, reference being particularly made to the accompanying affidavit of Charles H. Woods respecting the facts as to the Board's checking and verification of the Companies' compliance (R. 30-31). Paragraph IV (12) and (13) of the Answer, referring to the recent checking and verification of the extent of I. B. E. W. membership among the Companies and to the affidavit and report of Dr. J. J. Wittmer, Personnel Director, together with special reference to Exhibit F, appears on pages 32-34 of the Record and has been herein heretofore alluded to.

Mr. Carlisle's affidavit then sets forth in detail the attitude, policy and action of the Companies as to collective

bargaining matters and the status of the Amalgamated (CIO). (Paragraph V (14), (15) and (16) (R. 34-36), which have been hereinabove referred to).

The attention of this Honorable Court is respectfully asked to Paragraph [redacted] of the [redacted] AFFIDAVIT (R. 36), to the effect that neither the Board nor its Regional Director has at any time informed or advised the Companies that they were not complying with the Order of Court; that no complaint of violation, or proceeding based on violation, of the Order of Court has been initiated by the Board; that no one connected with the Amalgamated or the CIO has brought to his (Mr. Carlisle's) attention any of the matters now complained of other than those considered and replied to in the correspondence previously referred to in the affidavit, in which correspondence he, Mr. Carlisle, reiterated his purpose that any claimed violations brought to his attention would be dealt with "promptly and adequately".

Thereupon, in Paragraph VI of the affidavit are set forth a summary of the charges and grounds of the Motion and a summary of the Companies' reply thereto, with specific reference to the affidavits accompanying Mr. Carlisle's affidavit. It is respectfully believed by these Respondents and is respectfully submitted by them, that the Answer, accompanying affidavits, and the summary of replies, upon the part of the Companies, each and all stated with marked directness and distinctness, sustain the position and contention of these Respondents herein that the Amalgamated's Motion and accompanying affidavits are insufficient to show violation of the Court's Decree of January 21, 1939, granting enforcement of the Board's Order of November 10, 1937, as modified and interpreted by the Opinion and judgment of this Honorable Court.

IV.

Not Any of the Grounds or Reasons for Certiorari Referred to in Supreme Court Rule 38, Section 5 (b), Is Shown in the Petition Herein.

Supreme Court Rule 38, Section 5, declares the principle, well settled by this Court, that a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The Rule then indicates the character of reasons which will be considered in determining whether or not the writ shall issue in a particular case. Paragraph (b) of Section 5 deals with the writ to review decisions of Circuit Courts of Appeals, and indicates the character of reasons for granting the writ, which will be considered in connection with the decisions of those courts, as follows:

Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter;

Or has decided an important question of local law in a way probably in conflict with applicable local decisions;

Or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority;

Or has decided an important question of federal law which has not been, but should be, settled by this Court;

Or has decided a federal question in a way probably in conflict with applicable decisions of this Court;

Or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such

a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Now, whilst the above enumeration is "neither controlling nor fully measuring the Court's discretion", they quite comprehensively cover the substantial field wherein certiorari will issue to review decisions of a Circuit Court of Appeals.

It is respectfully submitted that the Petition for Certiorari in this case, and the Brief supporting it, fail to show any reasons of the character prescribed by the Rule.

1. No conflict is shown in the decision of the Circuit Court below with the decision of any other Circuit Court of Appeals on the same matter.

2. The decision of the Court below does not deal with any question of local law.

3. The Petition fails to show that the decision below was of an important question of *general law*, regardless of the further requirements which the Rule prescribes with respect to such Decisions.

4. The Petition fails to show that the Decision below is of an important question of federal law, which has not been, but should be, settled by this Court. The Decision below is clearly sustained by the Decisions of this Court construing and giving effect to the National Labor Relations Act, wherein the exclusive powers of the Board with respect to proceedings before it under the Act and with respect to the enforcement of its Orders, have been considered and passed upon.

> "The power 'to prevent any persons from engaging in any unfair practice affecting commerce' has

been vested by Congress in the Board and the Circuit Court of Appeals, and Congress has declared: 'This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.'"

Myers v. Bethlehem Shipbuilding Co., 303 U. S. 41, 48, 51.

Newport News Shipbuilding Co. v. Schauffler, 303 U. S. 54, 57.

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 46, 47.

In the Matter of the Petition of the N. L. R. B., 304 U. S. 486; 82 L. Ed. 1482.

Moreover, the Decision of this Court upon the virtually identical provision in the Federal Trade Commission Act with the provisions for procedure and enforcement in the National Labor Relations Act has adjudicated and settled the intent and effect of such legislation.

Federal Trade Commission v. Klesner, 280 U. S. 19, 25.

5. The Petition fails to show that the Circuit Court of Appeals in its Decision below decided the federal question in a way probably in conflict with applicable Decisions of this Court. The Decisions of those Courts are not in conflict, but concurrence.

Agwilines, Inc. v. National Labor Relations Board, 87 F. (2) 146, 150 (C. C. A. 5).

National Labor Relations Board v. Colton, 105 F. (2) 179 (C. C. A. 6).

National Labor Relations Board v. Hearst, 102 F. (2) 658, 664 (C. C. A. 9).

National Labor Relations Board v. Carlisle Lumber Company, 99 F. (2) 533, 537 (C. C. A. 9).

6. And the Petition also fails to show that the Court below, in its Decision herein, has so far departed from the accepted and usual course of judicial proceedings, or so far sanctions such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

CONCLUSION.

Accordingly, it is respectfully submitted, for the Respondents, the International Brotherhood of Electrical Workers and Local Unions, that the said Petition of the Amalgamated Utility Workers for a Writ of Certiorari should be denied.

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